

Amendment No. 3 to HB2942

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AMEND Senate Bill No. 3004

House Bill No. 2942*

by deleting all provisions of the bill following the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Section 67-6-102(2), is amended by deleting the language therein in its entirety and substituting instead the following:

"Business" includes any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect. "Business" includes occasional and isolated sales and transactions involving the transfer of aircraft, vessels, or motor vehicles between corporations or other business entities and their members or stockholders.

"Business" includes transactions caused by the merger, consolidation, or reorganization of corporations or other business entities. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft which are so based shall constitute evidence thereof. "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by, or purchased from, a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" shall be construed to include occasional and isolated sales or transactions by such a

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person involving aircraft, vessels or motor vehicles (which terms include trailers and special motor equipment sold in conjunction therewith), as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are: married, lineal relatives or spouses of lineal relatives, or siblings;

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

Section _____. There is exempt from the tax levied by this chapter:

(1) Any sale or use of any article, manufactured of the produce of this state exempt from taxation pursuant to Section 30 of Article II of the Constitution of Tennessee;

(2) Any sale or use which would otherwise be taxable pursuant to the provisions of this chapter but which would impose a tax which is invalid either under the commerce clause or the due process clause of the Constitution of the United States;

(3) The following services:

(A) Educational Services

(i) Educational services (for-profit)

(ii) Educational services (non-profit)

(B) Finance, Insurance and Real Estate

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- (i) Investment banking, securities brokerage, and related
- (ii) Insurance agents and related
- (C) Health Care and Social Services (for profit)
 - (i) Physicians and dentists
 - (ii) Other health practitioners
 - (iii) Hospitals
 - (iv) Nursing and residential care facilities
 - (v) Outpatient care centers
 - (vi) Medical and diagnostic laboratories
 - (vii) Other selected health services
 - (viii) Social and community services
- (D) Health Care and Social Services (non-profit)
 - (i) Hospitals
 - (ii) Nursing and residential care facilities
 - (iii) Outpatient care centers
 - (iv) Other selected health services
 - (v) Social and community services
- (E) Media Advertising Sales
 - (i) Newspaper advertising
 - (ii) Radio advertising
 - (iii) Television advertising (broadcast and cable)
- (F) Professional and Technical Services

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- (i) Management, scientific and technical consulting
- (ii) Scientific research and development (profit and non-profit)
- (G) Transportation Services
 - (i) Couriers and messengers
 - (ii) Truck transportation (local)
 - (iii) Other transportation; and
- (H) Personal Services
 - (i) Death care services

(4) The costs, other than material costs, associated with the construction of commercial or industrial improvements to real property over one million dollars (\$1,000,000) on a single project.

SECTION 3. Tennessee Code Annotated, Section 67-6-102, is amended by adding the following new subdivisions:

() "Medical services" means any service obtained at, or through, a hospital, nursing home, or from any health care practitioner required to be licensed under Title 63, except veterinarians, athletic trainers, and electrologists.

() "Service" means all activities engaged in for other persons for a consideration, other than medical services, when the primary objective of the purchaser is the receipt of the benefit (if any) of the activity performed, as distinguished from the receipt of property. In determining what is a service, the intended use or stated objective of the contracting parties shall not necessarily

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be controlling. "Service" does not include, during the period that § 56-4-218 remains in effect, the sale or servicing (by any domestic or foreign insurance company or any broker or agent or employee of such company), of any insurance policy pertaining to life, fire, marine, fidelity, surety, casualty, liability or any other form of insurance for which premium taxes are paid pursuant to Title 56, Chapter 4, Part 2. "Service" does not include any activity performed for consideration, directly or indirectly, for a federal, state, or local governmental entity.

SECTION 4. Tennessee Code Annotated, Section 67-6-102(24), is amended by deleting subdivision (E) (iv) in its entirety, and is further amended by deleting subdivision (F) (i), (ii), and (iv) – (viii) and substituting instead the following, and renumbering the remaining subdivisions accordingly:

(F)

(i) "Retail sale," "sale at retail" and "retail sales price" includes any service, and such service is subject to tax under this chapter, when that service is performed in Tennessee for a consideration. It is the legislative intent that all services performed in Tennessee be subject to sales tax unless specifically exempted in this chapter.

(ii) With respect to services, other than telecommunication services, such services shall be considered to be performed in Tennessee if:

(a) Performed completely in Tennessee; or

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(b) Performed partially in Tennessee and partially outside of Tennessee, when the recipient or user of the service is located in Tennessee; or

(c) Performed partially in Tennessee and partially outside of Tennessee, if the recipient or user of the service is not located in Tennessee, but only to the extent of those services actually performed in Tennessee; or

(d) The place of performance cannot be determined, if the recipient or user of the service is located in Tennessee.

(iii) With respect to services, other than telecommunication services, such services performed partially in Tennessee and partially outside of Tennessee shall be presumed to have been performed completely in Tennessee unless the taxpayer can show the place of performance by clear and cogent evidence.

SECTION 5. Tennessee Code Annotated, Section 67-6-102, is amended by deleting subdivision (D) of paragraph (30) in its entirety and substituting instead the following:

“Telecommunications” does not include television programming or television services delivered by a provider of direct-to-home satellite service.

SECTION 6. Tennessee Code Annotated, Section 67-6-205, is amended by adding the following new subsections:

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() The crediting provisions of Sections 67-6-313(f) and 67-6-507(a) are specifically made applicable to the services described in Section 67-6-102(24)(F)(i), when all or part of the performance of those services takes place outside of Tennessee.

() The tax levied by this section does not apply to charges made by the state and its political subdivisions, when providing on-street parking space for which charges are collected, or when operating or conducting a garage or parking lot which is unattended and such charges are collected by parking meters.

() With respect to staff leasing companies, the tax levied by this section applies only to gross receipts as defined in Section 62-43-121.

() With respect to collection agencies, the tax levied by this section applies only to the administrative fees received by the collection agency from clients, rather than the gross collections made on behalf of clients.

SECTION 7. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (f).

SECTION 8. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following new section:

Section _____. Notwithstanding any other provision of law to the contrary, a portion of the revenue in an amount equal to one-half percent (0.5%) generated from any sale or use which is taxed at the rate of the tax levied on the sale of tangible personal property at retail by the provisions of §67-6-202 shall continue

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to be dedicated for education purposes until changed by the general assembly.

All revenue generated from such portion of the sales tax rate shall be deposited in the education trust fund and earmarked for education purposes as provided in §49-3-357.

SECTION 9. Tennessee Code Annotated, Section 67-6-202(a), is amended by adding the following after the words "at retail in this state":

until July 1, 2003, at which time the rate shall be reduced to five and one-half percent (5.5%).

Tennessee Code Annotated, Section 67-6-202, is further amended by deleting subsection (b) in its entirety.

SECTION 10. Tennessee Code Annotated, Section 67-6-203(a), is amended by deleting the language "six percent (6%)" and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of §67-6-202".

Tennessee Code Annotated, Section 67-6-203, is further amended by deleting subsection (c) in its entirety.

SECTION 11. Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of §67-6-202".

Tennessee Code Annotated, Section 67-6-204, is further amended by deleting subsection (d) in its entirety.

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SECTION 12. Tennessee Code Annotated, Section 67-6-205(a), is amended by adding the following after the words "under this chapter":

until July 1, 2003, at which time the rate shall be the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202.

Tennessee Code Annotated, Section 67-6-205, is further amended by deleting subsection (b) in its entirety.

SECTION 13. Tennessee Code Annotated, Section 67-6-206(b)(1), is amended by deleting the language "one percent (1%)" and "one and one-half percent (1.5%)" and substituting the language "four and one-half percent (4.5%)" in each place.

SECTION 14. Tennessee Code Annotated, Section 67-6-209, is amended by deleting the language therein in its entirety and substituting instead the following:

(a) Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, which the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, such person so using the tangible personal property shall pay the tax herein levied on the fair market value of such tangible personal property when used, without any deductions except as provided in this chapter; provided, that the foregoing shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property which becomes a component part of a building, and which is not sold by them as a manufactured item.

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(b) Where a contractor or subcontractor hereinafter defined as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, such contractor or subcontractor shall pay a tax at the rate prescribed by Section 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid.

(c) The tax imposed by this section shall have no application where the contractor or subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter. However, the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty does not constitute a sale, except as provided in Section 67-6-102(8).

SECTION 15. Tennessee Code Annotated, Section 67-4-506, is deleted in its entirety.

SECTION 16. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by deleting Sections 67-6-204(b), 67-6-216, 67-6-217, and 67-6-223 in their entirety.

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SECTION 17. Tennessee Code Annotated, Section 67-6-301 is amended by deleting the language therein in its entirety and substituting instead the following:

The tax imposed by this chapter shall not apply to the direct product of the soil in the hands of the producer, and his immediate vendee.

SECTION 18. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following as a new section:

Exempt from the tax imposed by this chapter are services performed by bona fide employees for their employers, to the extent their compensation is in the form of salary, commissions, or other compensation traditionally and normally provided to bona fide employees. Whether or not a person is a bona fide employee shall be determined based on the totality of the circumstances. Factors to be considered include, but are not limited to, whether the person paying the compensation reports employee compensation to the internal revenue service, whether the alleged employee is covered under workers' compensation laws, and whether the employer pays payroll taxes on account of its employment of the alleged employee.

SECTION 19. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting Sections 67-6-309, and 67-6-311, in their entirety.

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SECTION 20. Tennessee Code Annotated, Section 67-6-330, is amended by deleting subdivisions (a) (3), (4), (8), (10), (14), and (19), and by deleting subsection (b).

SECTION 21. Tennessee Code Annotated, Section 67-6-329, is amended by deleting subdivision (a) (22) in its entirety.

SECTION 22. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by deleting Sections 67-6-336, 67-6-349, 67-6-350, 67-6-351, and 67-6-354, in their entirety.

SECTION 23. Tennessee Code Annotated, Section 67-4-507, is repealed in its entirety.

SECTION 24. Tennessee Code Annotated, Section 67-6-212(a), is amended by adding the following language as a new, appropriately numbered subdivision:

() Charges made for operating any machine or device that is intended to provide the user any form of amusement, entertainment, music or game.

SECTION 25. Tennessee Code Annotated, Section 67-6-201, is amended by adding a new subdivision, as follows:

(11) Provides or engages in services not otherwise exempt from the sales and use tax pursuant to this chapter. Provided, however, that services taxable pursuant to the addition of services or removal of exemptions by this act, shall be a taxable privilege for state purposes only and shall not be permitted to be taxed under the provisions of the Local Option Revenue Act, Tennessee Code Annotated, Title 67, Chapter 7, Part 7.

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SECTION 26. Sections 7 – 17 and 19 – 24 shall take effect July 1, 2002, the public welfare requiring it. Sections 1, 2, 3, 4, 5, 6, 18, and 25 shall take effect October 1, 2002, the public welfare requiring it. The commissioner of revenue is authorized to promulgate any necessary rules or regulations upon this act becoming law, the public welfare requiring it.